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**6450-01-P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 440**

**[Docket No. EEWAP0130]**

**RIN 1904-AC16**

**Weatherization Assistance for Low-Income Persons: Maintaining the Privacy of Applicants for and Recipients of Services**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) published an interim final rule on March 11, 2010, requiring that all States and other service providers that participate in the Weatherization Assistance Program (WAP) treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA). DOE published a final rule on June 7, 2010, adopting the interim final rule as final without change. This adoption inadvertently caused the sunset date of December 6, 2010, stated in the interim final rule to also be adopted as final. DOE is today adopting the amendments to 10 CFR Part 440 of chapter II of title 10, Code of Federal Regulations set forth in the interim final rule without adopting the sunset date.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Background and Authority**

Title IV, Energy Conservation and Production Act, as amended, authorizes DOE to administer the WAP. All grant awards made under this program must comply with applicable authorities, including regulations contained in Title 10 of the Code of Federal Regulations (10 CFR part 440).

**II. Discussion**

On March 11, 2010, (75 FR 11419), DOE published an interim final rule requiring all States and other service providers that participate in the WAP treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the FOIA. The background and

explanation of that interim final rule was set out in the March 11 publication. DOE received one comment letter and published a final rule on June 7, 2010, (75 FR 32089), adopting the interim final rule as final without change because some of the suggestions in the comments were already incorporated in the interim final rule and DOE declined to adopt the other suggestions.

The final rule was effective on July 7, 2010. However, the adoption of the interim final rule as final without change inadvertently caused the sunset date of December 6, 2010, stated in the interim final rule to also be adopted as final. To correct the inclusion of the interim final rule's sunset date in the final rule, DOE is today adopting the amendments to 10 CFR Part 440 of chapter II of title 10, Code of Federal Regulations set forth in the interim final rule without adopting the sunset date.

### **III. Procedural Issues and Regulatory Review**

#### **A. Review under Executive Order 12866**

Today's regulatory action is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review" (58 Fed. Reg. 51735 (Oct. 4, 1993)). Accordingly, today's action was not reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

#### **B. Administrative Procedure Act**

DOE finds that providing prior notice and comment on today's final rule would be unnecessary. See, 5 U.S.C. 553(b)(3)(B). As noted above, today's final rule corrects an inadvertent application of a sunset date to a final rule that was previously subject to notice and comment. DOE received and responded to the one comment received as a result of that public

notice and comment opportunity. Today's final rule adopts the regulatory language as finalized in the prior final rule.

### **C. Congressional Notification**

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### **List of Subjects in 10 CFR Part 440**

Administrative Practice and Procedure, Aged, Energy conservation, Grant Programs-Energy, Grant Programs-Housing and Community Development, Housing Standards-Indians, Individuals with Disabilities, Reporting and Recordkeeping Requirements, Weatherization.

Issued in Washington, DC, on February 17, 2012.

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Henry C. Kelly  
Acting Assistant Secretary  
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE is amending 10 CFR part 440 as set forth below:

## **PART 440--WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS**

1. The authority citation for Part 440 continues to read as follows:

**Authority:** 42 U.S.C. 6861 et seq.; 42 U.S.C. 7101 et seq.

2. Section 440.2 is amended by adding a new paragraph (e) to read as follows:

### **§ 440.2 Administration of grants.**

\* \* \* \* \*

(e)(1) States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors that participate in the program established under this Part are required to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6). Under 5 U.S.C. 552(b)(6), information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure.

(2) A balancing test must be used in applying Exemption (b)(6) in order to determine:

(i) Whether a significant privacy interest would be invaded;

(ii) Whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and

(iii) Whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

(3) A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the State or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.

(4) Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. However, a State or service provider must apply an FOIA Exemption (b)(6) balancing test to any request for information that can not be satisfied by such less-intrusive methods.

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